



REGULAR MEETING
PUBLIC EMPLOYEES' RETIREMENT BOARD

September 11, 2008

President Jay Klawon called the regular meeting to order at 8:30 a.m. Thursday, September 11, 2008. Roll call was taken with all members of the Board being present. Board members and staff present were:

Roll Call:

Jay Klawon, President
John Paull, Vice President
Darcy Halpin, Member
John Nielsen, Member
Ray Peck, Member
Dianna Porter, Member
Terry Smith, Member
Roxanne Minnehan, Executive Director
Melanie Symons, Legal Counsel
Scott Miller, Legal Counsel
Ursula Hatfield, Executive Assistant

OPEN MEETING

Nancy Quirino, Great West Retirement Services; Jason Baker, Ed Cleary, Doug Neil, Chad Nicholson, Matt Norby, and Rich Ryan, members of the Montana State Firemen's Association; Tom Schneider, MPEA; William Hanson, Attorney; Leo Berry, AMRPE; Susan Asay, Rich Colasuonno and Bret Estep, PIMCO; and Renae Deadmond, Internal Auditor; Kim Flatow, Member Services Bureau Chief; Barb Quinn, Fiscal Services Bureau Chief; Kathy Samson, DC Education Services Bureau Chief; joined the meeting.

MINUTES OF OPEN MEETING

The minutes of the open meeting of August 14, 2008 were presented.

Motion: Mr. John Paull moved to approve the minutes of the August 14, 2008 PERB Regular Open Meeting.

Second: Ms. Dianna Porter

No public comment.

Vote: 4/0 President Klawon, Ms. Halpin and Mr. Smith abstained.

Public Comment on any subject of interest not on the Board agenda: No public comment.

EXECUTIVE DIRECTOR'S REPORT – Roxanne Minnehan, Executive Director

Contested Cases – Melanie Symons

Informal Consideration – PERS, Compensation Determination

State agencies have made significant in-service payouts of annual leave and compensatory leave balances to certain employees. These large, unanticipated payouts result in salary spiking which can significantly increase the members' lifetime retirement benefit and adversely impact the systems' funding. MPERA has informed the agencies and affected employees. Some of the members have appealed the staff decision. MPERA will discuss the practice, the statute and the situation in general, without discussion of specific employees. If these employees appeal this decision then there will be done on an individual basis. The payout of excess leave artificially raises the highest average compensation (HAC). This determines their retirement benefit. These payouts were termed as bonuses. Bonuses are included in the calculation for HAC. However, in each of these instances the "bonus" was identified as excess leave. In accordance to 19-3-103(1)(b)(v), MCA the payouts are not compensation for PERS purposes. Montana Operations Manual addresses the payout of excessive leave. The contributions must be returned to the employer.

Motion: Mr. Terry Smith moved to uphold staffs determination that the "bonuses" paid to certain employees of the Montana Department of Transportation were in-service payments directly related to excess leave and exempt compensatory time earned by the recipient, and therefore not compensation for PERS purposes.

Second: Mr. John Nielsen

No public comment.

Vote: 7/0

Informal Reconsideration – FURS, Membership Eligibility, Central Valley RFD

Mr. William Hanson, attorney for Central Valley Rural Fire District requested consideration in open meeting. At the July Board meeting, the Board informally considered and upheld the staff decision that a "firefighter's initial appointment as a paid firefighter may have occurred prior to age 35 in order for the firefighter to join FURS". Mr. Hanson, on behalf of Central Valley RFD has appealed the Board's decision. Mr. Hanson addressed the Board, stating that the language of Senate Bill 532, together with its legislative history, confirms that any full-time paid firefighters of a rural fire district, who is also a member of PERS, is qualified to become a member of FURS

provided the rural fire district elects to join that retirement system. Central Valley argues that there are ambiguities in statutory definitions and dicta in decisions issued by the Montana Supreme Court, the Montana Attorney General, and the Montana Human Rights' Commission. Mr. Hanson is stating this ruling is violating Montana's and possibly federal age discrimination laws as a legitimate bona fide occupational qualification (BFOQ) does not exist. He also states that the statute doesn't address volunteer firefighters before the age requirement can join FURS. Ms. Symons rebutted that the Board does not have the authority to rule against state statute. Statute states a member must be receiving compensation to be employed. A volunteer is not paid.

Motion: Mr. John Paull moved to uphold staffs determination that a firefighter's initial appointment as a paid firefighter must have occurred prior to age 35 in order for the firefighter to join FURS.

Second: Mr. Ray Peck

No public comment.

Vote: 7/0

457 Plan Document – New Provision – Kathy Samson

Last month the Board approved changes to the 457 Plan Document. Staff has noted that the Plan Document should have included a provision for the Heroes Earnings Assistance and Relief Tax Act (HEART) of 2008. MPERA believes it would be positive and beneficial to add this provision to the Plan Document. Staff would like to discuss the provision with ICE Miller and determine the full extent and implications of the provision. Staff is requesting the Board approve the addition of this provision, pending discussions and approval by ICE Miller.

Motion: Ms. Darcy Halpin moved to add the new provision to the 457 plan Document pursuant to the Heroes Earnings Assistance and Relief Act of 2008, HR 6081 pending discussion and approval of ICE Miller, the Board's tax counsel.

Second: Mr. John Nielsen

No public comment.

Vote: 7/0

DC Reserve & Fee Review – Kathy Samson and Barbara Quinn

The Defined Contribution Retirement Plan (DCRP) Fees are reviewed annually taking into consideration historic and projected income, expenses and Board goals. The DCRP plan is new there isn't enough history to adequately project future outcomes. MPERA's accountants have provided the Board with their best estimates. Retirement preparation is critical to our members. The administrative account could be used to provide additional services to our members. A reserve balance has been suggested by the Board. MPERA staff would appreciate a Board policy on how to maintain the balance. Staff is recommending the reserve be set at no less than two times

the current fiscal year DCRP expenses. Mr. Smith stated that he is not comfortable setting it at two times the expenses, but would consider one times the DCRP expenses. Members of the Board would like more education on the DCRP plans before making further decision affecting the PERS-DCRP.

Motion: Mr. Terry Smith moved that an administrative reserve for the DCRP be established and that the reserve be set at no less than one times the current fiscal year DCRP expenses.

Second: Mr. Ray Peck

No public comment.

Vote: 7/0

Motion: Ms. Dianna Porter moved to postpone the original motion until after the Board Retreat and the discussion and vote on the maintenance of the current basis point fee at 25 basis points annually.

Second: Mr. John Nielsen

No public comment.

Vote: 7/0

2009 Draft Legislation

Staff has continued to draft the Board's three legislative proposals. The initial bill drafts are due September 15. Final bill drafts are due by October 31.

General Revisions Bill – Kim Flatow

Ms. Symons addressed the Board with some changes to the bill draft. An amendment to 19-13-210 to reference resolution and ordinance, the statute originally only addressed resolutions.

Motion: Mr. John Paull moved to approve the working draft of the General Revisions Bill.

Second: Ms. Darcy Halpin

No public comment.

Vote: 7/0

Qualifications Bill - Melanie Symons

Staff has included change to the Family Law Order, statute 19-2-907, the Board made the decision to adopt federal law, which allows MPERA in regards to a Defined Contribution Retirement Plans (DCRP) to pay the alternative payee immediately, rather than waiting for the member to terminate employment. Mr. Miller addressed the Board in regards to statute 19-9-1208; this will put a limit on the DROP distributions. The proposal is to have a fixed rate of interest equal to the actuarial assumed rate of return. This will reflect IRS codes, keep the best interest of the DROP members and improve administrative processes. Currently DROP participants get the interest at the fiscal year end. So the participant could be paid zero interest in bad return years.

Motion: Ms. Dianna Porter moved to approve the working draft of the Qualifications Bill.

Second: Ms. Darcy Halpin

No public comment.

Vote: 7/0

Working Retiree Bill – Scott Miller

Mr. Miller addressed the Board with a change to the proposed draft as originally discussed. The Board wanted to include the employee contributions as well as the employer contributions. This proved to be controversial after the April SAVA meeting. Mr. Miller amended the bill to reflect collection of employer contributions only.

Motion: Mr. John Paull moved to approve the working draft of the Working Retiree Bill.

Second: Mr. John Nielsen

No public comment.

Vote: 7/0

Ms. Minnehan addressed the Board with a possible legislative issue. The State Auditors Office (SAO) has contacted Ms. Minnehan about moving a process to MPERA. Ms. Minnehan is asking the Board for their opinion before she goes before the Economic Affairs Interim Committee, Friday, September 12, 2008. SOA distributes general fund money to several different public pension plan trustees. The Public Employees Retirement Board is one of those trustees – we receive distributions of general fund monies through these administrative processes for several of our retirement plans. The proposal would split the responsibility for distributing general fund money to public pension plan trustees between the Board and another entity – the Board would be required to be the distributor of payments to other pension plan trustees, but at the same time the Board would be the recipient of payment from another entity. Since the Board is a recipient of those distributions, the Board would have a substantial conflict of interest in also being the entity in charge of making those distributions. Of larger concern to the Board is that in order to maintain the tax-qualified status of our retirement plans, federal law requires that we use trust fund monies

only to pay retirement benefits and the reasonable and necessary expenses of administering the retirement plans.

The Board would therefore need a general fund appropriation in order to pay the costs of performing this administrative function. Again, this is a plan qualification issue- the Board cannot use trust fund monies to perform the proposed administrative function. The Board agreed with the staff's decision.

Out of State Travel Authorizations – Roxanne Minnehan

The Board must approve all out-of-state travel. This request is for Renae Deadmond to attend the Association of Public Pension Fund Auditor (APPFA) Annual Conference in Charleston, SC, November 2 – 6.

Association of Public Pension Fund Auditors (APPFA) Annual Conference – Charleston, SC, November 2-6 – Renae Deadmond

APPFA brings together auditors from other public pension funds. This conference would be beneficial for Ms. Deadmond to attend. Because this is a new position, there are no notes or processes in place. Ms. Deadmond will be able to meet with her counterparts, determine what processes other public pension auditors are using and obtain contracts for future reference. This conference is included in the FY 2009 approved budget.

Motion: Ms. Dianna Porter to allow Renae Deadmond to attend the APPFA in Charleston, SC, Sunday, November 2 through Wednesday, November 6, 2008.

Second: Ms. Dianna Porter

No public comment.

Vote: 7/0

Committee Member Assessment – Jay Klawon

President Klawon and Ms. Minnehan addressed a current issue with a member of the Board. In June, Ms. Minnehan received a phone call from David Ewer, Budget Director. Mr. Ewer stated that Mr. Smith contacted him and Senator Balyeat, questioning whether the plan choice unfunded liability was correctly implemented. Mr. Ewer was contacting Ms. Minnehan as a courtesy, however; the Auditors Office has this information and will be auditing this stated concern. Because Mr. Smith raised an issue where there wasn't one the Board and MPERA will incur greater scrutiny, costs and harm to our reputation.

President Klawon removed Mr. Smith from the Legislative Committee, replacing Mr. Smith with himself. He also removed Mr. Smith from the Audit Committee with a member to be announced at a later date.

Board Education – Actuarial Definitions and Process – Scott Miller

Mr. Miller educated the Board on what actuary valuations mean and why it is important to MPERA. Mr. Miller also informed the Board that it is their fiduciary responsibility for making actuarial determinations necessary for the various plans the Board administers. The Board will be receiving the fiscal year 2008 actuarial valuations in October. An actuary analyzes the financial consequences of risk. Actuaries use mathematics, statistics and financial theory to study uncertain future events. Pension actuaries analyze probabilities related to the demographics of the members in a pension plan and economic factors that may affect the value of benefits and the value of assets held in a pension plan's trust. An actuarial valuation measures current costs and contribution requirements to determine how much employers and employees should contribute to maintain appropriate benefit funding progress. A valuation takes into consideration a range of factors that affect the funding progress of the plan. Some factors are: 1.) plan provisions, 2.) participant data, 3.) financial data, 4.) actuarial assumptions and 5.) funding methods and policies. The actuarial report will include a summary of actuarial methods and funding policies that have been adopted by the system.

Vendor Update – PIMCO – Susan Asay, Richard Colasuonno and Bret Estep

PIMCO is a global investment management firm with more than \$829.5 billion in assets under management as of June 30, 2008 and more than 1000 employees in offices in Newport Beach, New York, Singapore, Tokyo, London, Sydney, Munich, Toronto and Hong Kong. PIMCO are MPERA's bond managers for our Stable Value Fund. They manage portfolios according to approved guidelines and report performance statistics. As of June 30, 2008 US Fixed Income show strong performances of Treasuries and TIPS driven by credit fears and inflation concerns. In the last 12 months globally there are issues of return slow down. The market is not making returns so investors are not getting paid enough to take risks.

Verbal Update – MPERA Staffing – Roxanne Minnehan

File Clerk was filled by Alvina Davis. Alvina has 28 years of receptionist experience. She started September 4.

Pay/Benefit Technician was filled internally by Jacquie Hixson. Jacquie was our receptionist. Her start date is September 12.

Receptionist position has been posted externally and will close September 24.

IT Programmer is currently open and has been posted externally closing September 29.

Retiree Database Support Cindy Carrington resigned. Her last day was September 12. This has been posted externally closing September 29.

Disabilities Examiner, is currently open and has not been posted.

Administrative Support, Member Services is a new position and a job profile has yet to be finalized.

Verbal Update – Board of Investments (BOI) – John Paull

Retirement Assets first quarter lost \$79 million. Private Equity is up 9.80%. Real Estate Pool is up 5.97%. Domestic Equity Pool is down 13% and International Equity Pool is down 10%. Another company has been added to the manager watch list, North Point Capital due to their performance in the Small Cap Growth Strategy. They join Goldman Sachs, Principle Global, and Western Asset. Retirement Funds Pool is up 5.28% for the year.

Verbal Update – Litigation – Melanie Symons, Scott Miller

Ms. Symons informed the Board that our rules went to the Secretary of States Office. The proposed adoption notice will be in the Montana Legislative Register.

Mr. Miller addressed the Board about the MPPA protective order. The protective order has been presented and signed then forwarded to Steve Bullock, MPPA's attorney. A list has been given to Mr. Bullock as to the information given to the actuary, MPPA has not responded.

Next SAVA Meeting

September 15, 2008

Next Board Meeting

October 9, 2008
November 14, 2008
December 11, 2008

Board Retreat

November 13, 2008

The following portion of the meeting relates to matters of individual privacy. The Board President determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.

CLOSED MEETING

Reconvene of open meeting

The minutes of the regular closed meeting of August 14, 2008 were presented.

Motion: Mr. John Nielsen moved to approve the minutes of the August 14, 2008 PERB Regular Closed Meeting.

Second: Mr. Ray Peck

Vote: 4/0 with President Klawon, Ms. Halpin and Mr. Smith abstaining.

Contested Cases

Informal Reconsideration – Disability Reconsideration for PS – Kim Flatow

Motion: President Jay Klawon moved to approve regular disability for PS without annual review.

Second: Ms. Dianna Porter

Vote: 7/0

Consideration of Proposed Order – SRS, Duty-related vs. Non Duty-related Disability, RM – Melanie Symons

Motion: Mr. John Paull moved to approve the Hearing Examiner's decision.

Second: Mr. Terry Smith

Vote: 7/0

Finalized Service Retirements Disability Benefit Payments - Kim Flatow

Motion: Ms. Darcy Halpin moved to approve the Finalized Service Retirement/Disability Benefit Payments with addendum and corrections.

Second: Ms. Dianna Porter

Vote: 7/0

Contested Case/Litigation Updates – Melanie Symons, Scott Miller

No updates given during closed meeting.

ADJOURNMENT

There being no further business before the Board, Ms. Darcy Halpin moved to adjourn the meeting, Mr. Terry Smith seconded. All voted aye, next regular meeting will be October 9, 2008. Meeting closed at approximately 2:50.

N. Jay Klawon, President

ATTEST:

Roxanne M. Minnehan, Executive Director